

## **D# 36 PROCEDURE FOR FEES**

### **General Description**

The City of Renton Planning Division made this docket request. This item proposes to amend RMC 4-1-160 School Impact Mitigation Fees so that the fees will be collected based on the rate that is in place at the time the building permit is issued. Currently, the fee is based on the rate that is in place at the time of site plan approval. A second proposed change is in regards to the table that is included in this portion of the code which details the fee amount for single family and multi-family units. A recent code interpretation (CI-07) determined that Accessory Dwelling Units should be charged school impact fees at the same rate as multi-family units. It is proposed that the table be amended accordingly.

### **Impact Analysis**

#### Effect on rate of growth, development, and conversion of land as envisioned in the Plan

Not applicable. The proposed changes would not affect the rate of growth or rate of development.

#### Effect on the City's capacity to provide adequate public facilities

Not applicable. There are no anticipated effects on the City's capacity to provide adequate public facilities created by the proposed changes.

#### Effect on the rate of population and employment growth

Not applicable. There are no anticipated effects on the rate of population and employment growth created by the proposed changes.

#### Whether Plan objectives are being met as specified or remain valid and desirable

Not applicable. In general, this docket item includes only a procedural change to Title IV and as such there are no relevant Comprehensive Plan objectives.

#### Effect on general land values or housing costs

Not applicable. There are no anticipated effects on general land values or housing costs created by the proposed changes.

#### Whether capital improvements or expenditures are being made or completed as expected

Not applicable.

#### Consistency with GMA and Countywide Planning Policies

Not applicable. The proposed changes do not have any bearing on the Growth Management Act (GMA) and Countywide Planning Policies.

#### Effect on critical areas and natural resource lands

Not applicable. The proposed changes would not have any effects on critical areas and/or natural resource lands.

Effect on other considerations

Not applicable.

**First Staff Recommendation**

Staff recommends amending 4-1-160.E Assessment of Impact Fees as shown in strikeout form below.

E. Assessment of Impact Fees:

1. The City shall collect school impact fees, established by this Section as adjusted from time to time, from any applicant seeking ~~development~~ building permit approval from the City for dwelling units located within the District's boundaries. ~~where such development activity requires final plat or PUD approval or the issuance of a residential building permit or a mobile home permit.~~
- ~~2. For a plat or PUD applied for on or after the effective date of Ordinance 4808, the impact fees due on the plat or the PUD shall be assessed and collected from the applicant when the building permit for each dwelling unit is issued, using the fee schedule in effect when the plat or PUD receives preliminary approval. Residential developments proposed for short plats shall not be governed by this subsection, but shall be governed by subsection (E)(4) of this Section.~~
- ~~3.2. If, on the effective date of Ordinance 4808, a plat or PUD has already received preliminary approval through King County, but then if any~~ For any of the fee that has been paid through King County, the remainder of the impact fees shall be assessed and collected from the lot owner at the time the building permits are issued, using the fee schedule then in effect. ~~at the time of preliminary plat approval.~~ If no payment was made through King County, then the entire fee will be due and owing at the time building permits are issued. ~~If, on the effective date of Ordinance 4808, an applicant has applied for preliminary plat or PUD approval, but has not yet received such approval, the applicant shall follow the procedures set forth in subsection (E)(2) of this Section.~~
- ~~4.3. For existing lots or lots not covered by subsection B of this Section, applications for single family, mobile home permits, and site plan approval for mobile home parks proposed~~ all new dwelling units, the total amount of the impact fees shall be assessed and collected from the applicant ~~when the building permit is issued~~ at the time of building permit issuance, using the fee schedule then in effect. ~~Irrespective of the date that the application for a building permit or mobile home permit or site plan approval was submitted, no approval shall be granted and no~~ No permit shall be issued until the required school impact fees set forth in the fee schedule have been paid.

The manner in which the code currently functions allows applicants to be vested to the fee schedule for impact fees that was in place when they received preliminary approval for their plat application. They pay the fees when they are issued a building permit for a dwelling. The amount of time that, on average, passes between the preliminary plat approval and the issuance of building permits is two to five years. Due to the significant time between these two aspects of land development, the impacts of school age children on the school districts, especially the impacts to the Renton School District, are not as effectively mitigated. For the Renton School District (RSD) this issue is particularly acute because RSD adopted a school impact fee for the first time in 2009. If new dwelling units are allowed to not pay impact fees because they are paying the amount of the fee that was in effect at the time of their plat approval (\$0 in the case of RSD prior to 2009) the real impacts of anticipated new children in schools will not be mitigated.

Case law regarding the issue of vested rights for impact fees has changed since the time the existing language was adopted. The proposed amendment reflects case law decisions regarding vested rights that have occurred since then. The code language that is proposed to be stricken was adopted in 1999 and reflected the laws and court decisions up to that time. Since then, court decisions have further clarified State law regarding vesting and what aspects of the land use process can be vested.

Municipal Research Services Center explains vested rights:

"In Washington State, the vested rights doctrine "refers generally to the notion that a land use application, under the proper conditions, will be considered only under the land use statutes and ordinances in effect at the time of the application's submission." *Noble Manor v. Pierce County*, 133 Wn.2d 269, 275 (1997). The doctrine was originally applied by the state supreme court and in a different manner than is applied in a majority of states, where it is invoked only when substantial development has occurred in reliance on an issued permit. See *Hull v. Hunt*, 53 Wn.2d 125, 128-30 (1958). The rationale for the Washington courts rejecting the majority approach and applying the doctrine upon permit application is to provide certainty and predictability in land use regulations. *West Main Assocs. Inc. v. City of Bellevue*, 106 Wn.2d 47, 51 (1986) ("Society suffers if property owners cannot plan developments with reasonable certainty, and cannot carry out the developments they begin.") The Washington approach is, according to the courts, based on "constitutional principles of fairness and due process, acknowledging that development rights are valuable and protected property interests." *Weyerhaeuser v. Pierce County*, 95 Wn. App. 883, 891 (1999)."

However, in December 1999 the court decision in the *New Castle Investments v. City of La Center* case held that vested rights do not apply to impact fees. This change in case law allows the City to determine the appropriate time to collect impact fees.

Additionally, the City of Renton attorney's office has determined that, "under RCW 58.17.033, a vesting statute, a development is subject to the "land use control ordinances" in effect at the time the application was perfected. But this court has already decided that impact fees do not affect physical aspects of a development. Therefore, they are not land use control ordinances. The impact fees simply add to the cost of a project, and the vested rights doctrine does not protect the developer against such additional cost. *Belleau v. City of Bellingham*, 150 Wash. App. 228, 239 (Div. I 2009)."

Therefore, staff recommends that RMC 4-1-160 be amended as shown on page 2 of this report. Court decisions that have occurred since the time of adoption of the existing code have determined that impact fees are not vested to the standards that were in place at the time of application. By amending the code so that school impact fees are collected at the time of building permit issuance, the proposed changes work to more accurately mitigate the impacts of children on the school districts.

### Second Staff Recommendation

The second staff recommendation proposes to codify a code interpretation (CI-07). The interpretation found that "While accessory dwelling units do not increase the density of the residential lots on which they are located, they are neither considered single-family nor multi-family dwellings when calculating school impact fees. An addition to the headings in the table in RMC 4-1-160D.5 would provide clarification of the school impact fees which would be charged for new accessory dwelling units. Specifically, the heading "Multi-Family Fee Amount", should be amended to read "Multi-Family and Accessory Dwelling Unit Fee Amount".

The proposed amendment is shown below in strikeout:

5. The City Council may adjust the fee calculated under this subsection, as it sees fit, to take into account local conditions such as, but not limited to, price differentials throughout the District in the cost of new housing, school occupancy levels, and the percent of the District's Capital Facilities Budget which will be expended locally. The City Council establishes the following fees:

	Single-Family Fee Amount	Multi-Family <u>and</u> <u>Accessory</u> <u>Dwelling Unit</u> Fee Amount
Issaquah School District	\$3,344.00	Not Applicable
Kent School District	\$5,394.00	\$3,322.00
Renton School District	\$6,310.00	\$1,258.00